

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON  
PORTLAND DIVISION

JESSICA MARQUEZ,

2:09-CV-01254-SU

Plaintiff,

ORDER

v.

HARPER SCHOOL DISTRICT NO.  
66, a public entity also  
known as MALHEUR COUNTY  
SCHOOL DISTRICT NO 66; DENNIS  
SAVAGE, Harper School  
District No. 66  
Superintendent; LYNN HAUETER,  
member of Harper School  
District No. 66 Board of  
Directors; SHELLY DENNIS,  
Chair, Harper School District  
No. 66 Board of Directors;  
LISA FISHER, member of Harper  
School District No. 66 Board  
of Directors; RON TALBOT,  
Principal, Harper School  
District No. 66; BARBARA  
OLSON, member of Harper  
School District No. 66 Board  
of Directors; each and all in  
their individual and official  
capacities

Defendants.

**BROWN, Judge.**

Magistrate Judge Patricia Sullivan issued Findings and Recommendation (#51) on March 24, 2011, in which she recommended the Court deny Plaintiff's Motion (#30) for Partial Summary Judgment and grant in part and deny in part Defendants' Motion (#27) for Summary Judgment on the grounds that genuine issues of material fact exist that preclude summary judgment with respect to Plaintiff's claims other than the claim for intentional infliction of emotional distress. Plaintiff filed timely Objections to the Findings and Recommendation. The matter is now before this Court pursuant to 28 U.S.C. § 636(b)(1) and Federal Rule of Civil Procedure 72(b).

When any party objects to any portion of the Magistrate Judge's Findings and Recommendation, the district court must make a *de novo* determination of that portion of the Magistrate Judge's report. 28 U.S.C. § 636(b)(1). See also *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9<sup>th</sup> Cir. 2003) (*en banc*); *United States v. Bernhardt*, 840 F.2d 1441, 1444 (9<sup>th</sup> Cir. 1988).

**I. Portions of the Findings and Recommendation to which Plaintiff did not object.**

As to the portions of the Findings and Recommendation to which Plaintiff did not object, this Court is relieved of its obligation to review the record *de novo*. See *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9<sup>th</sup> Cir. 2003) (*en banc*). See

also *United States v. Bernhardt*, 840 F.2d 1441, 1444 (9<sup>th</sup> Cir. 1988). Having reviewed the legal principles *de novo*, the Court does not find any error in these portions of the Magistrate Judge's analysis of the grounds on which the parties moved for summary judgment.

**II. Portions of the Findings and Recommendation to which Plaintiff objected.**

Plaintiff objects to the Findings and Recommendation "to the extent that the F&R conclude that any of defendants' justifications for their actions are legitimate, non-discriminatory justifications, and to the extent that the F&R recommend denial of plaintiff's Motion for Summary Judgment on plaintiff's First through Fifth claims for relief."

**A. Defendants' legitimate, nondiscriminatory reasons for their actions.**

As noted, Plaintiff objects to the Findings and Recommendation "to the extent that the F&R conclude that any of defendants' justifications for their actions are legitimate, non-discriminatory justifications." In her Objections, however, Plaintiff simply reiterates the arguments contained in her Response to Defendants' Motion for Summary Judgment. Moreover, the Court notes the Magistrate Judge's conclusion in this regard merely relates to the applicable burden-shifting analysis the Magistrate Judge was required to apply. The conclusion does not, however, resolve Plaintiff's claims. Indeed, the Magistrate

Judge appropriately found many issues of disputed material fact precluding summary judgment. After carefully considering Plaintiff's Objections to the Magistrate Judge's conclusion that Defendants provided legitimate, nondiscriminatory reasons for some of their actions, this Court concludes Plaintiff's Objections do not provide a basis to modify the Findings and Recommendation. The Court also has reviewed the pertinent portions of the record *de novo* and does not find any error in the Magistrate Judge's analysis of the grounds on which the parties moved for summary judgment with respect to this issue.

**B. Denial of Plaintiff's Motion for Summary Judgment as to Plaintiff's First through Fifth Claims.**

Plaintiff also objects to the Magistrate Judge's recommendation that the Court deny Plaintiff's Motion for Partial Summary Judgment as to Plaintiff's First through Fifth Claims because "[P]laintiff's evidence of pretext is overwhelming and warrants summary judgment in [P]laintiff's favor." In her Objections, however, Plaintiff merely reiterates the arguments contained in her Response to Defendants' Motion for Summary Judgment. Again, the Magistrate Judge's analysis merely concludes there remain issues of fact as to pretext. Again, after carefully considering Plaintiff's Objections to the Magistrate Judge's conclusion that genuine disputes of material fact exist precluding summary judgment on Plaintiff's First through Fifth Claims, this Court concludes Plaintiff's Objections

do not provide a basis to modify the Findings and Recommendation. The Court also has reviewed the pertinent portions of the record *de novo* and does not find any error in the Magistrate Judge's analysis of the grounds on which the parties moved for summary judgment with respect to this issue with respect to this issue.

**CONCLUSION**

The Court **ADOPTS** Magistrate Judge Sullivan's Findings and Recommendation (#51), **DENIES** Plaintiff's Motion (#30) for Partial Summary Judgment, and **GRANTS in part** and **DENIES in part** Defendants' Motion (#27) for Summary Judgment.

IT IS SO ORDERED.

DATED this 16<sup>th</sup> day of June, 2011.



ANNA J. BROWN  
United States District Judge